IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1851 of 1999
in

SPECIAL CIVIL APPLICATIONNo 11221 of 1998

with
CIVIL APPLICATION NO. 55 OF 2000

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COLLECTOR

Versus

SANJANBEN N RATHOD THRO' POA RAJENDRASING NATHUSING RATHOD

Appearance:
Ms. Manisha Lavkumar, Asstt.GOVERNMENT PLEADER for Appellants
MR MP PRAJAPATI for Respondent No. 1

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE P.B.MAJMUDAR
Date of decision: 19/01/2000

ORAL JUDGEMENT

Admitted. Mr. M.P. Prajapati appears for the respondent- original petitioner and waives service of notice of admission. In the facts and circumstances of the case and with the consent of learned advocates, the matter is taken up for final hearing today.

This appeal is filed against the judgment and order passed by the learned Single Judge on October 28, 1999 in SCA No.11221 of 1998.

The said order reads thus:

"Rule. Mrs. Talati and Mr. Bhagat waive service of rule for the respective parties. By consent of the parties, the matter is taken up for immediate hearing.

Learned counsel for the respondents state that the petitioner may be permitted to remove the material already excavated before 30.9.1997 but they should not be allowed to carry on any further mining activity or go to the site with any mining instrument . In the circumstances, the petitioner is permitted to go to the site without any mining instrument and remove the excavated material which is lying there within three months from the receipt of the order and thereafter they shall not enter the said area and carry on any mining activity. The petitioner shall also pay royalty on the material removed in accordance with rules. Rule is made absolute to the above extent. Direct service permitted".

Respondent was the original petitioner. She filed the above petition for an appropriate writ, direction or order in terms of para 16 which reads as under :

"16. Petitioner, therefore, prays:

(A) Your Lordships will be pleased to issue appropriate writ of direction quashing or setting aside the impugned order Annexure C dated 18.12.1998 by the District Collector and be pleased to issue writ of mandamus and any other appropriate writ, order or direction directing the respondent to permit the petitioner to remove building stock approximately 4500 metric stones

lying in Survey No. 452 and 453 of village Malan, district-Banaskantha.

(B) Pending and final hearing of this petition, interim injunction be issued against respondents restraining them from preventing the petitioner from removing the building stone approximately 4500 mt.tones lying in Survey No. 452 and 453 of village Malan of District Banaskantha.

(C) Any other reliefs deemed fit in the circumstances of the case may please be granted."

It appears that when the matter was placed for hearing before the learned Single Judge, no counter affidavit was filed either by respondent No.1 or by respondents Nos.2 and 3. It also appears that Rule was issued on October 28, 1999. On the same day, the petition was finally disposed of. From the order, extracted hereinabove, it is clear that the learned Single Judge recorded a statement made on behalf of learned counsel for the respondents that "the petitioner may be permitted to remove the material already excavated before 30.9.1997 but they should not be allowed to carry on any further mining activity or go to the site with any mining instrument". Thus, on the basis of the statement made on behalf of the respondent authorities, the petitioner was permitted to remove the material excavated before September 30, 1997. In the present appeal, the State has challenged that order.

It was strenuously argued on behalf of the appellants by the learned AGP that the order passed by the learned Single Judge is contrary to law and inconsistent with the order passed by the Honourable Supreme Court on December 12, 1996 in WP No. 202 of 1995. It was also stated that criminal proceedings were initiated and registered as FIR No.4 of 1997-98 and a panchnama was also prepared. It was,therefore, submitted that in these circumstances , no statement could have been made by the respondent-authorities permitting the petitioner to remove the material excavated before September 30,. 1997. Learned Single Judge has committed an error of law and jurisdiction in passing the impugned order which requires to be set aside.

Mr. Prajapati, on the other hand, supported the order passed by the learned Single Judge. He submitted that ample opportunities were afforded by the learned Single

Judge to the respondents. The respondent authorities, however, were totally negligent and careless and did not file any counter. He also submitted that no criminal case has been filed against the petitioner and she is not at all responsible. He stated that the petitioner had placed all materials available before the learned Single Judge and considering the facts and circumstances and in the light of the statement made by the learned counsel for the respondent authorities, an order was passed which cannot be said to be illegal or contrary to law.

In the facts and circumstances of the case, in our opinion, LPA deserves to be allowed. Looking to the order passed by the learned Single Judge , there is no doubt, in our minds, that the petition was allowed and Rule was made absolute to the extent indicated in the judgment only on the basis of the concession and consent given by the learned counsel for the respondent authorities. In our opinion, however, the learned Single Judge ought to have considered all the facts including the effect of the order passed by the Supreme Court on December 12, 1996 referred to in Annexure `G' to the petition. Learned Single Judge ought to have considered a criminal complaint registered as FIR No. 4/1997-98 and the purported statement said to have been made by the son of the petitioner. The effect of pendency of the civil suit was also a relevant fact while disposing of Special Civil Application.

It was, no doubt, contended by Mr. Prajapati that though reliance was placed on the report submitted by the Deputy Forest Officer on December 15, 1998, a copy thereof was not supplied to the petitioner. We express no opinion one way or the other on that question. In our opinion, however,the petition could not have been disposed of only on the basis of statement made on behalf of learned counsel of the respondent authorities.

For the foregoing reasons, in our view, LPA deserves to be allowed and is accordingly allowed. The order passed by the learned Single Judge is set aside and the matter is sent back to the learned Single Judge for fresh disposal in accordance with law. Since we are not entering into merits of the matter and the learned Single Judge has also not decided the petition on merits, it goes without saying that as and when the matter will be placed before the learned Single Judge for hearing, he will decide the same in accordance with law after considering all relevant facts and circumstances of the case. LPA is accordingly allowed. No order as to costs. No order on civil application.

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